IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5441 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

MANJULABEN DULLABHBHAI & 7 - Petitioner(s)

Versus

COLLECTOR BHARUCH & 1 - Respondent(s)

==========

Appearance :

MR AR MAJMUDAR for Petitioner(s) : 1 - 8.MR UTPAL M PANCHAL for Petitioner(s) : 6,UNSERVED-EXPIRED (N) for Petitioner(s) : 8,
MR MR MENGADE ASST GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1. This matter is called out twice today. The learned advocate appearing on behalf of the petitioners is absent. Since the matter is of the

year 1987, this Court has no other alternative but to decide and dispose of the present Special Civil Application on merits ex-parte in absence of presence of the learned advocate for the petitioners.

2. In this petition under Article 226 of the Constitution of India the respective petitioners have prayed for an appropriate writ, order or direction to quash and set aside the action of the respondent in asking the petitioners to vacate the land on which they are doing business by putting their cabins. The petitioners have also prayed to direct the respondent to consider their case for regularization of their cabins situated at Javahar Bazar area of village Netrang, Taluka Valia in Bharuch District.

3. From the pleadings in the petition, it appears that the respective petitioners are having their cabins on the Government land and it is their contention that they are paying taxes to Netrang Gram Panchayat. Some of the petitioners have relied upon the receipts issued by Netrang Gram Panchayat in support of their case to contend that they are paying

rent for putting up their cabins. It is also the contention of the petitioners that some other persons who are having their pakka houses on the government land and their constructions have been regularized and therefore, various other cabin holders in the same town are doing business in the government waste land without any hindrance or difficulty and therefore, the possession/cabins of the petitioners should be regularized.

4. On going through the documents/annexures which are annexed to the petition and the receipts which are produced on record, it cannot be said that any of the petitioners are tenant and/or they are paying rent. It appears that the Gram Panchayat has recovered some fine /fees, but the same cannot be termed as lease in favour of the petitioners. It requires to be noted that the petitioners have not pointed out any fundamental rights and/or any other rights in their favour to have cabins on government waste land. No particulars have been given by the petitioners in the petition with regard to regularization of construction of some other persons

who have been alleged to have occupied the government waste land. In absence of any such particulars, contention on behalf of the petitioners with regard to discriminatory treatment, cannot be accepted. The petitioners have, as such, no right to carry on their business by putting up cabins on government land and they have no right to continue to do their business while illegally occupying the government waste land. As such, the petitioners are in illegal occupation and possession of the government waste land and it appears that they have encroached upon the government waste land.

5. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed.

6. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith. However, there will be no order as to costs.

(M.R.SHAH, J.)

=kailash=